



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charley Lockhart
State Treasurer
Austin, Texas

Dear Sir:

Opinion No. O-3309
Re: Relative to the stamp tax
on deed of trust executed
by Honolulu Oil Corporation.

We have your letter of March 20, 1941, to which is attached copy of a deed of trust executed by Honolulu Oil Corporation. You quote from a letter written to you by the Corporation showing the pertinent facts, as follows:

"The situation is as follows: At the time the Deed of Trust was recorded, there was no obligation secured thereby, for the reason that no obligation to pay comes into existence until after a Well is completed by Livermore. The total obligation at all times is set out in the Certificates of Contingent Indebtedness. Series 'A' and Series 'B' as provided in the Deed of Trust. However, at the time the Deed of Trust was recorded, eight Wells were being drilled and in order to be on the safe side, we estimated the cost of said eight Wells at the amount of \$29,800 per Well or \$238,400 for the eight Wells. After deducting for the first \$200.00 as provided in the statute, we purchased and attached to the Deed of Trust when filed, Note Stamps in the amount of \$238.20 to cover the estimated cost of the first eight Wells. To date, only four of said Wells have been completed and have had Certificates issued thereon. In the future, after the Indebtedness secured by the Deed of Trust passes the amount of \$238,400, and at regular intervals thereafter, we propose to file an Affidavit similar to the one which is enclosed, herewith, setting out

the pertinent facts and attaching to the Affidavit Note Stamps in an amount sufficient when figured with the Note Stamps attached to the Deed of Trust and the previously filed Affidavits to comply with the requirements of the Statute as to a secured obligation in the amount of the principal Indebtedness as of that date.'"

A copy of the affidavit mentioned in the quotation follows:

"THE STATE OF TEXAS, |
COUNTY OF MIDLAND. |

"Before me, the undersigned authority, on this day personally appeared F. D. Grant, who being duly sworn on oath, says:

"That he is the Chief Clerk for Honolulu Oil Corporation, and is duly authorized and qualified to make this Affidavit and knows of his own knowledge the facts herein set out. That he is familiar with the terms and provisions of a certain Deed of Trust between Honolulu Oil Corporation, First Party, and the Continental National Bank of Fort Worth, Trustee, and Geo. P. Livermore, Inc., and Mid-Continent Supply Co., Beneficiaries, dated December 16, 1940, recorded in Book 27, Page 196, Deed of Trust Records, Hockley County, Texas, and Book 9, Page 486, Deed of Trust Records, Cochran County, Texas, and Book 24, Page 210, Deed of Trust Records, Terry County, Texas. That as of the date hereof, Series 'A' Certificates and Series 'B' Certificates have been issued under the terms of said Deed of Trust, aggregating in principal amount _____ Dollars (\$_____). That this Affidavit is being made to set out the amount of Indebtedness now secured by said Deed of Trust for the purpose of payment of Note Stamp Taxes as provided in Article 7047e of Texas Revised Civil Statutes (1925). That there have been purchased and affixed to this Affidavit Note Stamps in the amount

Honorable Charley Lockhart, Page 3

Stamps when aggregated with Note Stamps previously purchased and affixed to the original Deed of Trust or to previously filed Affidavits of this nature, total _____ Dollars (\$_____) in Note Stamps purchased as Taxes on the secured obligation above described.

"
F. D. Grant, Chief Clerk,
Honolulu Oil Corporation."

"Subscribed and sworn to, before, me, by the said F. D. Grant, this ____ day of _____, 19____, to certify which, witness my hand and seal of office.

"
Notary Public in and for
Midland County, Texas."

You request our opinion as to whether the procedure which the Corporation proposed to follow is a proper one.

A tax of ten cents on each \$100.00 or fraction thereof, over the first \$200.00, of the amount secured by deeds of trust and other named instruments, is levied by Article 7047e, Vernon's Annotated Civil Statutes. In said Act is found the following provision:

"If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due."

Since the amount secured is not stated in the face of the deed of trust it presents a proper case for the County Clerk to require the affidavits suggested in the quoted provision of the statute. Furthermore, since the amount was uncertain at the time the deed of trust was originally filed, it could not then be shown by affidavit or otherwise. As the amount becomes definite from time to time we think it quite proper for such fact to be shown in

Honorable Charley Lockhart, Page 4

the manner proposed and stamps affixed accordingly. We would suggest, however, that the affidavit be acknowledged and then recorded in the deed of trust records.

APPROVED APR 16, 1941

Yours very truly

ATTORNEY GENERAL OF TEXAS

James R. Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

By

Glenn R. Lewis
Glenn R. Lewis
Assistant

GRL:LM

